**Minette Mills, Inc. *and* Amalgamated Clothing and Textile Workers Union, AFL–CIO.** Cases 11–CA–13862 and 11–RC–5684

December 31, 1991

DECISION, ORDER, AND DIRECTION OF SECOND ELECTION

BY MEMBERS DEVANEY, OVIATT, AND RAUDABAUGH

On April 4, 1991, Administrative Law Judge J. Pargen Robertson issued the attached decision. The Respondent filed exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and brief and has decided to affirm the judge's rulings, findings,[1] and conclusions and to adopt the recommended Order.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge and orders that the Respondent, Minette Mills, Inc., Grover, North Carolina, its officers, agents, successors, and assigns, shall take the action set forth in the Order.

[Direction of Second Election omitted from publication.]

[1] The Respondent has excepted to some of the judge's credibility findings. The Board's established policy is not to overrule an administrative law judge's credibility resolutions unless the clear preponderance of all the relevant evidence convinces us that they are incorrect. *Standard Dry Wall Products*, 91 NLRB 544 (1950), enfd. 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing the findings.

Because we adopt the judge's finding that the Respondent violated Sec. 8(a)(1) by Plant Manager Caldwell's interrogation of employees concerning their union activities, we find it unnecessary to pass on the judge's finding that the Respondent's owner, Thomas Tang, also interrogated employees, as the finding would be cumulative.

The judge found that Tang made an implied threat of unspecified reprisals at an April 19, 1990 meeting with second-shift employees. Tang told the employees that he viewed anyone supporting the Union as someone who did not like the job. He also said that the employees could transfer to one of the Respondent's unionized plants in Maine and that he wanted to remember all their faces. The Respondent excepts in part that Tang's reference to remembering faces is ''too vague'' to support the finding of a threat of unspecified reprisals. Remembering faces was only one element leading to the judge's finding, however. Moreover, on brief, in defending against Tang's alleged interrogation of employees at that meeting, the Respondent states that the employees at the meeting identified themselves as union supporters. The statement, that he would remember their faces, addressed to union supporters thus takes on additional meaning. We adopt the judge's finding that, through Tang's statements, the Respondent made an implied threat of unspecified reprisals against union supporters in violation of Sec. 8(a)(1) of the Act.



[Direction of Second Election omitted from publication.]

*Jasper C. Brown Jr., Esq.*, for the General Counsel.
*Charles P. Roberts, III, Esq.* and *Thomas T. Hodges, Esq.*, of Greenville, South Carolina, for the Respondent.
*Melvin W. Luebke*, of College Park, Georgia, for the Charging Party.

DECISION

J. PARGEN ROBERTSON, Administrative Law Judge. This matter was heard in Shelby, North Carolina, on October 22 and 23 and on December 19, 1990. The complaint in Case 11–CA–13862 issued on July 5 and was amended on October 22, 1990. The charge was filed on May 25 and amended on July 5, 1990. Following petition and a May 24, 1990 election, objections were filed by the Petitioner (the Union). Cases 11–RC–5684 and 11–CA–13862 were consolidated on July 31, 1990, by order of the National Labor Relations Board.

The complaint, as amended at the hearing, alleges that Respondent violated Section 8(a)(1) and (3) of the National Labor Relations Act (the Act).

Respondent admitted the commerce allegations of the complaint. Respondent admitted that it is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act; that it is engaged in the manufacturing of home furnishing textile products at its facility in Grover, North Carolina; and that, during the past 12 months, a representative period, it received at its Grover facility goods and raw materials valued in excess of $50,000 directly from points outside the State of North Carolina.

Additionally, Respondent admitted that the Charging Party (the Union) is a labor organization within the meaning of Section 2(5) of the Act.

In addition to the allegations of unfair labor practices, the National Labor Relations Board's order consolidating these cases included an order to hear matters raised by the Union in objections to an election dated May 31, 1990. On April 10, 1990, the Union filed its petition in Case 11–RC–5684. A July 11, 1990 Report on Objections issued by the Regional Director, shows that the parties agreed to a Stipulated Election on May 7, 1990, and an election was held on May 24, 1990, with 91 votes being cast against the Union, 74 votes were cast for the Union, and there was 1 void ballot. On May 31, the Union filed objections to conduct affecting the results of the election. The Regional Director recommended, and the Board ordered, that the Union's Objection 1 be overruled and that a hearing be held to resolve the issues raised by the Union's Objections 2–7.

The Union in its objections alleged that Respondent threatened employees with discharge; threatened its employees that they would ''pay for'' their union activities; threatened its employees with loss of benefits; threatened its employees with plant closure; predicted the futility of collective bargaining; and instituted a no-talking rule prohibiting its employees from talking about the Union except during breaktimes.

Following the initial hearing in this matter, the parties were advised that the court reporting service was unable to transcribe a portion of the testimony. That portion of the evidence included two witnesses called by the General Counsel. In that regard, a reading of the transcript incorrectly shows

that Respondent presented its defense evidence beginning immediately upon the hearing opening on the second day of the hearing, October 23, 1990. In fact, the General Counsel had called and examined two witnesses, Debra Wright and Douglas Wright, before Respondent called its first witness on that date. The October 23 testimony of Debra and Douglas Wright was lost.

On December 29, 1990, the hearing resumed. Debra Wright and Douglas Wright were recalled and examined.

## FINDINGS OF FACT

### I. THE 8(A)(1) ALLEGATIONS

#### A. *General Counsel Alleged that Respondent Threatened its Employees With Plant Closure if the Employees Selected the Union*

Employee Glenda Simpson testified that Personnel Director Neal addressed about 20 to 25 employees at Respondent's conference room on May 3, 1990. Simpson recalled that Neal showed the employees a list of some plants that were closing according to Neal because of union inefficiency. Simpson testified that Neal told the employees that their plant would wind up like that if the Union came in.

Wanda Neal testified that she was involved in three separate employee group meetings. In her talk in which she spoke about the closing of some plants, Neal used an outline of notes that she had reviewed the night before. According to Neal those particular speeches actually occurred on May 10 and 11, 1990. Neal spoke to the employees and took questions after her talk.

Neal testified that she covered a number of issues in addition to plant closings. As to closings she testified:

> In talking about job security we were showing our employees the number of plants that were closed that were Union plants.

Wanda Neal used flip charts from an overhead projector. Two charts were introduced, including the following:

> Pacific Mills—Columbia—165
> Levi Straus—N. Charleston—418
> Fieldcrest—Forest City—400
> Armitage Shanks—Mooresville—105
> Reeves Bros.—Cornelius—200
> Health-Tex—Cowpens—400

As to the above chart Neal testified:

> I pointed out these particular places. Named them off one by one with the number of employees that had lost their jobs that these plants were all unionized and that these plants had closed due to economic reasons.

The second flip chart read:

> In 5 years—
> 600 Closed Plants
> ACTWU!
> 53,000 Lost Jobs!

Neal testified about her comments regarding the above chart:

> It was also in the flip chart that we produced showing that six hundred (600) plants had closed in the last five (5) years that were all unionized by Act II and fifty-three thousand (53,000) employees had lost their jobs. This again due to economic reasons.

Neal denied that she said that any of the plants had closed simply because they had a union and she denied saying that Minette would close if the Union came in. She testified:

> I explained to the employees that these plants had closed due to Union inefficiency that right now Minette could produce—we were very flexible in how we produced our product that if an employee needed to work on another loom, then we could do so. If the Union came in, possibly that would not happen and our flexibility would be taken away and that we might not be able to produce our product as we were at this time.

I am convinced that Glenda Simpson testified truthfully regarding this particular allegation. As shown below I am unable to fully credit Wanda Neal.

The evidence shows that Wanda Neal gave the same general address to employees divided into several groups. Neal indicated that Respondent strongly opposed the Union. Although she covered a number of subjects, Neal emphasized that a number of unionized plants had been forced to close resulting in the loss of a great many jobs. Neal told the employees that 53,000 employees had lost their jobs because ACTWU organized plants had closed. Neal admitted that she did not say anything about nonunion plants closing. Glenda Simpson credibly testified that Neal said Minette would wind up like the closed union plants if the Union came in. I find that by those comments, Neal threatened that the plant would close if the employees selected the Union. That constitutes a violation of Section 8(a)(1). Among the Union's objections was an objection that Respondent threatened its employees with plant closure. The evidence here supports that objection. *299 Lincoln Street, Inc*., 292 NLRB 172 (1988); *National Micronetics*, 277 NLRB 993 (1985). *Southwire Co*., 277 NLRB 377 (1985). Cf. *UARCO, Inc*., 286 NLRB 55 (1987); *Daniel Construction Co*., 264 NLRB 569 (1983), enfd. 731 F.2d 191 (4th Cir. 1984).

#### B. *Respondent Allegedly Interrogated and Threatened its Employees with Loss of Jobs if the Employees Selected the Union and Respondent Allegedly Illegally Instituted a No-Talking Rule Prohibiting Union Activities*

On May 17, 1990, at an employee meeting Company President Bud Little read a letter from owner Thomas Tang. Respondent also mailed that letter to its employees. The letter read:

> With your help, I have been able to follow the union movement almost firsthand. I am not made happy by what I am seeing. I have noticed changes in attitudes of many of our employees. They are affected by the confusion that is created by the outsiders. I worry that they could be influenced to make a decision that many could come to regret.
>
> I also noticed that the operation in month of April has already been affected as operation is not performing

> to expectations. Bud, you know that Bates' downturn is result of inefficiency. I had meeting with union representatives four weeks ago to say that operation will close in six months if no improvement in Company. I worry for Minette and employees and say to you that union inefficiency could bring cloud on Minette future.
>
> I have had great deal of experience dealing with unions in industries throughout the world. I feel I must use experience to forecast what will happen if Company is unionized and prepare to protect stockholders.
>
> 1. Purpose of negotiation will be to protect economic interests of stockholders.
>
> 2. Financial burden of union interference in Company must be compensated out of the negotiations with the union.
>
> 3. Meantime, our competitors will see opportunity to reach into our market to exploit our weakness. Choices must be considered including turning to imports as means of protecting stockholders' demands for returns. I will need to do preparation on this now so don't have all ''eggs in same basket.''
>
> Bud, I know the law keeps close watch and you must use care in your words. However, you must find way to be sure employees fully understand what is right and what is wrong. I fear that minority may speak louder than majority. I fear that my ''family'' at Minette could fall victim to minority group experiment. A union victory could be a defeat for employees.
>
> I hope for all that Minette employees will make the right decision.

There is no dispute regarding the above letter. It was distributed to employees through a reading by Respondent's president, Bud Little, and copies were mailed to unit employees. The letter does not directly threaten the employees with loss of jobs. It does state that ''union inefficiency could bring cloud on Minette future.''

Among other things Tang's letter continues to emphasis the possibility of closing because of the Union in line with the talks by Personnel Manager Neal. The Bates plant mentioned by Tang is another of his textile plants. The second paragraph of the above letter follows through on the theme of plant closing brought out during Neal's talks to employees:

> I also noticed that the operation in month of April has already been affected as operation is not performing to expectations. Bud, you know that Bates' downturn is result of inefficiency. I had meeting with union representatives four weeks ago to say that operation will close in six months if no improvement in Company. I worry for Minette and employees and say to you that union inefficiency could bring cloud on Minette future.

Tang's message is that Minette could face union inefficiency which could result in it following the path of the Bates plant and that Bates may have to close. Tang's letter does present a vague threat of plant closure especially when considered against the background of Personnel Director Neal's speeches of closure of 600 union plants. Nevertheless, in light of the following cases and the vagueness of Tang's threat, I find that the evidence does not support the allegation in regards the letter. (*UARCO, Inc.*; *Daniel Construction Co.*, 264 NLRB 569 (1982), enfd. 731 F.2d 191 (4th Cir. 1984).)

Former employee Devin Shawn Devine testified that he assisted the Union pass out leaflets outside Respondent's gate on May 22, 1990. Devine reported for work on his shift, the second shift, immediately after he finished distributing union leaflets. Near the end of his shift on that day, John Caldwell came over:

> when he walked up to me he said that he seen me bring those papers in that day and he said I would pay for it when it's over with.

Devine's testimony on cross-examination included:

> Q. You also had a package of stickers [when you were distributing leaflets at the gate] that you brought in with you.
>
> A. Yes, sir. There was a bunch of us brought stickers.
>
> Q. These were Union stickers, pro-Union stickers.
>
> A. Yes, sir.
>
> Q. What did these stickers say? What type of things?
>
> A. Benefits and vote yes, pension, clean bathrooms, stuff like that.
>
> Q. And, you and some other employees took these stickers and pasted them all along the walls of the plant.
>
> A. Yes, sir.
>
> . . . .
>
> Q. This was not just a few stickers, there were as many as a 100 stickers posted along the plant walls.
>
> A. Yes, sir.
>
> Q. And, as I understand, when you first came in before you had posted the stickers Mr. Caldwell didn't say anything to you, did he?
>
> A. No, sir.
>
> . . . .
>
> Q. When did you put the stickers on the wall?
>
> A. It was sometime during the work shift hours.
>
> . . . .
>
> Q. Mr. Caldwell came up and spoke to you about the stickers, didn't he?
>
> A. Yes, sir.
>
> Q. He told you that you're not supposed to put stickers all over the walls.
>
> A. As I recall, yes.
>
> . . . .
>
> Q. And what he told you was that he was going to have to investigate that matter and that something would be done about it.
>
> A. Yes, sir.

John Caldwell testified that he saw Devine come to work with a handfull of stickers. When Caldwell came into the plant the next morning the walls, windows, bathrooms, and bulletin board were plastered with about 150 of the stickers. Caldwell investigated the matter and was told that three employees were involved in placing the stickers including Kevin Devine. Caldwell testified about his talk with Devine:

> I asked Kevin, I said, Kevin, do you know anything about these stickers that are on the wall and he said no,

> I don't, and I said, Kevin, I said, look me straight in the eye and tell me that you don't know anything about these stickers being put on the wall. He said we all put them up and that's the words he said. He said, we all put them up.
>
> . . . .
>
> I said did you know this is— you could get punished for this in a way of maybe getting fired and I said, we can't tear up our company policy—I mean, the policy of the company is you can't tear up or mess up the company's property. I said you can be fired. I said, you'll pay for it. That's the words I believe I said. I said you can pay for it with your job.

Wanda Neal testified that Respondent posted and distributed the following notice to employees after over a hundred stickers were placed throughout the plant. The stickers were difficult to remove:

> IMPORTANT NOTICE!
>
> Any employee who tampers with the bulletin boards or defaces Company property in any way will be subject to immediate termination. This includes the unauthorized posting of campaign propaganda on walls, equipment, and other Company property.
>
> Anyone who has information that may help identify the person(s) responsible is encouraged to come forward and report it. All information will be held in confidence.

The evidence shows that John Caldwell did threaten Devin Shawn Devine with discharge. The record shows that threat was justified. Devine and at least two other employees stuck some 150 prounion stickers throughout the plant while at work on the second shift. There were no supervisors on that shift. That action resulted in the littering of Respondent's entire plant and in Respondent spending substantial time and effort to remove the stickers and clean the plant.

In instances where an employee is involved in protected activity such as the posting of union stickers, an employer may defend an unfair labor practice allegation on showing it reasonably believed the employee was involved in misconduct. Here Respondent illustrated that it had a reasonable belief that its employees were engaged in misconduct by sticking some 100 to 150 union stickers throughout the plant. The General Counsel failed to prove that the employees did not engage in misconduct. (*Rubin Bros. Footwear*, 99 NLRB 610 (1952); *NLRB v. Burnup & Sims*, 379 U.S. 21 (1964); *Clear Pine Moldings*, 268 NLRB 1044 (1984).)

Douglas Wright testified about two conversations he had with John Caldwell on April 23, 1990:

> [John Caldwell] came up to me, it was right at shift changing time, and I was bent over working on a loom, and he came up to me and he was saying something and I couldn't understand him and I stood up and I said, ''what did you say?'' And, he said, ''Doug, said was you and Billy Count in that—and he called some other guy's name, and I said who, and he said that black guy out there, said was you all talking about the Union?'' I said, yes, sir, I said we was. And, he didn't say nothing else at that moment, he just turned around and walked off.

Douglas Wright testified that later that day he had a second conversation. Debra Wright was also present during that conversation. Douglas Wright's testimony corroborated Debra Wright who testified that she and her husband talked with Plant Manager John Caldwell at the end of their shift on April 23, 1990:

> I asked John Caldwell if we could get fired for discussing the Union and he said yes. He said that the only place we could discuss the Union was in the canteen. We couldn't even discuss it in the bathrooms. And, he asked if me and my husband was for the Union and Doug and I both said yes. And, he asked us why and we told him because we needed insurance and the plant needed cleaned up.
>
> . . . .
>
> He said that if we wanted insurance, they had insurance, that he would set up a meeting with us and Wanda Nail so she could explain the insurance to us, and my husband told him that we couldn't afford $350.00 a month for insurance.

John Caldwell testified that he did not recall the above conversations but he denied telling the Wrights that talking about the Union on the job could get them fired.

Despite John Caldwell's inability to recall the above conversations, I am convinced that they occurred as recalled by Douglas and Debra Wright. Both Wrights impressed me with their demeanor. I am convinced that they testified truthfully. On the other hand I was not as impressed with John Caldwell. Caldwell demonstrated difficulty in recalling details. I was not impressed with Caldwell's demeanor. To the extent his testimony conflicts with credited evidence, I discredit Caldwell.

The record shows that Respondent did not have a no talking rule in April 1990. I find that Respondent illegally instituted a no talking rule which discriminatorily prohibited protected activity. *299 Lincoln Street, Inc.*, 292 NLRB 172; *Orval Kent Food Co.*, 278 NLRB 402 (1986).

The credited evidence shows that John Caldwell did not simply inquire into whether employees were talking to the detriment of their or other employees' work. What Caldwell did was inquire into whether the employees were discussing the Union. Such an inquiry made to an employee that was not a known union supporter at that time, constitutes illegal interrogation.

There was also some evidence that Thomas Tang interrogated employees during an April 19 speech to the second shift. Douglas Wright's testimony included the following:

> [Thomas Tang] came out there and he asked us why we were wanting a union and Charles Cooke spoke up and said that we wanted a union because we needed insurance and cleaner restrooms and just a safer place to work in. And, Thomas Tang told him, he said, ''well, you're going about it the wrong way,'' said, ''the union is not going to help you get all this,'' said, ''if you all would have came to me and a talked to me, I could have got all this done for you, but I can't do it now

> on account of if I try to help you now, I'd be buying your votes from you.''

I credit the testimony of Debra Wright. Thomas Tang did not testify and no witness for Respondent held himself out as recalling everything that Tang said in his speech to the employees.

I find that the record proves that Respondent interrogated its employees about union activities. At the time Caldwell interrogated first Douglas then both Douglas and Debra Wright, only Debra Wright had done anything to show that she favored the Union. Debra Wright had persisted in questioning Thomas Tang during one of his April 19 meetings as Tang walked up and stared at her. Debra Wright's questions to Tang demonstrated that she favored the Union. When Caldwell questioned the Wrights on April 23, Douglas Wright had done nothing to demonstrate that he favored the Union. Although both Debra and Douglas Wright engaged in prounion activities, the record failed to show that Respondent was aware of any of those activities before April 23, other than Debra Wright's encounter with Thomas Tang.

When Thomas Tang addressed the employees on April 19 at least some, if not all, those employees were not known to favor the Union. Tang opened his April 19 meeting with a query to the employees. He asked why they wanted the Union. That query constituted interrogation. In fact, as shown by the record evidence, employees did respond to Tang's question. *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Kona 60 Minute Photo*, 277 NLRB 867 (1985); *Sunnyvale Medical Clinic*, 277 NLRB 1217 (1985); *WXON-TV*, 289 NLRB 615, 619 (1988); *NLRB v. Brookwood Furniture*, 701 F.2d 452 (5th Cir. 1983).

Additionally, the record shows that Plant Manager Caldwell illegally threatened its employees with discharge or loss of their jobs if they engaged in protected activities anywhere other than in the canteen area. The record illustrated that Respondent had never enforced a similar rule regarding talking about anything other than the Union. There was no showing that Respondent would have enforced a no talking rule in the absence of protected activities. As shown above, the rule only applied to protected activities. *Kona 60 Minute Photo*, supra; *Southwire Co. v. NLRB*, supra.

All of the above incidents fell within the critical period and, in view of my 8(a)(1) findings, I find that the above matters also constitute objectionable conduct.

### C. *Supervisor Leonard Robinson was Alleged to Have Threatened Loss of Jobs*

Vera Ellis testified about a conversation she had with Robinson behind her loom on September 24 or 25, 1990:

> [Robinson] said that the Company was trying to get insurance, you know, we was talking about insurance and he said the company was trying to get insurance for the employees. I told him no, they wouldn't because there had been several companies done tried to come and sell them insurance and they didn't accept it. Then I said I wished the Union had got in and he said that that could get me fired.

Leonard Robinson admitted that he did talk with Vera Ellis but he denied threatening her with discharge.

I was impressed with Vera Ellis' demeanor. Moreover, Ellis testified at length about several issues. As to almost all her testimony there was substantial corroboration from witnesses of Respondent. I credit the testimony of Ellis and, to the extent there are conflicts, I discredit the testimony of Robinson.

The credited evidence proved that Respondent threatened that Ellis could be discharged because of her support of the Union. I find that constitutes an 8(a)(1) violation. In view of the fact that Robinson's comments came after the election, I find that those comments do not constitute objectionable conduct. *Krona 60 Minute Photo*, supra; *Southwire Co. v. NLRB*, supra.

### D. *General Counsel Alleged that Respondent Threatened Employees with Unspecified Reprisals*

Debra Wright testified that she attended a meeting of the second-shift employees on April 19, 1990. Respondent's owner Thomas Tang and Plant Manager Caldwell conducted the meeting. Debra Wright testified:

> Well, Thomas Tang said that he want—well, he wanted to know why we wanted a union and told us that a union couldn't help us. And, Charles Cooke spoke a lot about insurance. And, Thomas Tang said that if anybody didn't like their job, said they knew where the door was, and he said that if we wanted a union that we could get transferred to Bates Plant in Maine, but he wouldn't have a union there.
>
> . . . .
>
> Thomas Tang said that he couldn't promise us anything with the Union trying to get in and he said that he wanted to remember all of our faces. And, I asked him why couldn't he promise us anything before the Union started trying to get in. And, he just moved closed to me, asking me what, wanting to know what I had said, and he got up close to me and I repeated it, I asked him why couldn't he have promised us anything before. And, he never did answer my question, he just backed up and him and Charles Cooke went on about—they were kind of arguing back and forth about insurance and the Union. And, Charles Cooke told him that everybody there was for the Union and nobody denied it.
>
> . . . .
>
> Well, Thomas Tang kept talking and we just—me and Doug and Charles Cooke and Lillian Cooke walked off. We got tired of listening to it and then the other employees kind of just drifted out, following, you know, just coming behind us out of there.

Plant Manager Caldwell admitted that Tang did say something to the employees about the Bates plant being unionized and if they did not like their jobs, they could transfer to the Bates plant.

As indicated above I credit the testimony of Debra Wright. Her credited testimony shows the employees were encouraged to transfer to a unionized plant of Respondent in Maine, if they wanted a union and that Respondent viewed anyone supporting the union as someone that did not like their job. Moreover, Thomas Tang implied that he would remember the employees' faces. By that action Respondent made an

implied threat of unspecified detrimental action against union supporters in violation of Section 8(a)(1). Those comments occurred during the critical period and constitute objectionable conduct. *Groves Truck & Trailer*, 281 NLRB 1194 (1986).

### E. *John Caldwell was Alleged to Have Created the Impression that Respondent was Engaged in Surveillance of the Employees' Union Activities*

Employee Vera Ellis testified to a conversation with Caldwell on May 3, 1990, at her work:

> John Caldwell spoke to me and told me that he had heard that I was a strong Union supporter and he said that he didn't want me at today's Company meeting. I told him that I wanted to go to the meeting and he told me that he didn't want me at this meeting or any of the other series of meetings that's supposed to come up. Then, I told him yes, I was a strong Union member and I didn't care who knew it.
>
> . . . .
>
> Q. Were you wearing any type of Union buttons or any type of insignia at the time?
>
> A. No, sir.

According to Ellis, she had not engaged in overt union activities under the observation of supervision, before the May 3 conversation with Caldwell.

John Caldwell testified there were disturbances during the first employee meetings and that Ellis was one of the employees causing a disturbance. According to Caldwell he knew Ellis supported the Union because of her actions during that meeting. Caldwell admitted talking to Ellis:

> Well, yes, I said that according to the—we feel like that you're working for the Union and we just don't feel like you need to be in it. She had already expressed her feelings toward us.

Personnel Director Neal testified that several employees including Ellis, were excluded from the employee meetings because the employees were disruptive in earlier meetings. Neal testified that the decision to exclude Ellis was based on her observation of Ellis in one of a series of employee meetings. Neal testified that she observed Ellis in the early meeting and:

> In the meeting she sat there and continuously shook her head no to every statement that was made and snickered out loud and it took attention away from the meeting.

I credit the testimony of Vera Ellis and Wanda Neal regarding this matter. I find that Respondent did tell Ellis that she was excluded from an employee meeting. I find in agreement with Neal and Caldwell, that Ellis was excluded because of what Respondent observed of Ellis during an earlier meeting. Neal's testimony illustrates that Ellis did nothing improper during that earlier meeting. Nevertheless the record shows that Respondent determined on the basis of her actions, to exclude her from future antiunion employee meetings. I find that the evidence does not support a finding of a violation of Section 8(a)(1) or objectionable conduct.

### F. *The General Counsel Alleged That Respondent Threatened its Employees With Loss of Benefits if They Selected the Union*

Employee Glenda Simpson testified about a conversation she had with Plant Manager Caldwell at her work on April 20, 1990:

> I told him [I was] fine, how about him and he said the Union—the situation was about to run him crazy. I said well, how long will this be going on. He said about a month. He said now you know I can't say too much about it, but they'll fix your wages if you vote the Union in to $3.75 an hour. I said they can't because the Labor Board won't let them. We had a power failure and he walked off. Before I walked off he said—when I said they can't, the Labor Board won't let them he said you don't know the Chinese.

The record illustrated that Respondent's employees frequently referred to Respondent's owner as a ''Chinese.''

John Caldwell admitted having the above conversation with Glenda Simpson. On direct examination Caldwell denied threatening that wages would be cut to $3.75. On cross-examination, Caldwell admitted that he said the Company could cut back to $3.75 and hour. Caldwell testified that he was not aware that Simpson supported the Union but that she told him that she did support the Union during this conversation.

I was impressed with the demeanor of Glenda Simpson. Her testimony shows that Caldwell threatened that employees' wages would be reduced to $3.75 per hour if they selected the Union as their bargaining representative. Caldwell's comments constitute 8(a)(1) violations and objectionable conduct. See discussion in *299 Lincoln Street, Inc*., 292 NLRB 172.

## II. THE 8(A)(3) ALLEGATIONS

The complaint alleges that Respondent discharged Debra and Douglas Wright because of their union activities.

As shown below I find that the General Counsel proved that Respondent discharged the Wrights because of their protected activities and I find that Respondent failed to prove that the Wrights would have been discharged in the absence of protected activities.

The record evidence shows that Debra and Douglas Wright worked on Respondent's second shift.

Debra Wright was a weaver. Douglas Wright was a fixer. He was responsible for repairing or fixing looms. Douglas and Debra Wright started working for Respondent in September 1989. Their supervisor was James Evans. James Evans worked during the first shift. Evans usually left the plant around 2 p.m. Another supervisor, Don Sellers, usually left around 5 p.m. Neither Evans nor any other supervisor was not at the plant during the second shift after 5 p.m.

Debra and Douglas Wright supported the Union during its 1990 campaign. She handed out authorization cards and discussed the Union with other employees. Douglas Wright passed out union leaflets.

On April 27, 1990, Douglas Wright was one of the ''fixers,'' and it was his job to keep a portion of the operating looms working. Another fixer, Alfred Causby, was assigned

some of the remaining looms which included some of the looms assigned to Debra Wright.

During the shift Debra Wright flagged one of her looms for repair. Alfred Causby checked the loom but left. Debra Wright again tried unsuccessfully to operate that loom and she flagged the loom again. On that occasion Causby told Wright that ''if I would leave the god damn thing flagged that maybe he could fix the damn thing.''

Debra Wright told her husband that Alfred Causby had been cussing toward her.

Douglas Wright testified that his wife was crying when she told him that Alfred Causby had cussed her.

Subsequently, Douglas Wright told his wife that they should leave after he was told that Alfred Causby said to another fixer that if Douglas Wright wanted his wife's looms fixed he could fix them himself. Douglas Wright suggested to Debra that they should leave and talk with Supervisor James Evans the next day.

Wright and his wife left because he was afraid of something happening like 2 weeks earlier when two fixers had gotten into a fight.

Alfred Causby denied that he cursed in Debra Wright's presence and Causby denied that he told another fixer that Douglas Wright could fix his wife's looms. However, Causby testified that no supervisor talked to him about the April 27 events.

On the following day Douglas and Debra Wright came in one-half hour early. Their supervisor, James Evans, was not at the plant. Plant Manager John Caldwell was phoned and he came in and talked with the Wrights. Debra Wright testified that among other things the meeting included the following:

> Well, Doug and I both were telling John what had happened with Alfred cussing me, and John said that he could settle this problem but he didn't want to go over James Evans' head, and he told us that none of this started until the Union started trying to get in. And, I said—me and Doug both said that the Union didn't have anything to do with this.

The record showed without dispute that Alfred Causby opposed the Union. Debra and Douglas Wright supported the Union.

John Caldwell admitted talking with the Wrights on April 28 about their walking off the job the night before. He recalled that Debra Wright said that the fixer had used profanity but Caldwell testified that she did not use the term ''god damn.'' Caldwell recalled saying something about their having more problems since the union activity.

John Caldwell admitted that the Wrights told him that they had told Charles Cooke that they were leaving work on the night of April 27.

When the Wrights returned on Monday, April 30, James Evans directed them into Personnel Director Wanda Neal's office where the four of them met. Wanda Neal told the Wrights that Respondent considered that they had quit when they left their job. Douglas Wright said that they had told employee Charles Cooke that they were leaving. Debra Wright's testimony from that point in their conversation follows:

> And, Doug told them that he had told Charles Cooke that we were going home and James [Evans] seemed shock—I mean, he looked at Doug and said, you told Charles Cooke? And, Doug said, yes. And, Wanda Nail [sic] just kept repeating that we automatically quit. She said anytime that you walk off of a production job, you automatically quit.

James Evans admitted that Debra Wright said that she and her husband had not quit their jobs.

### A. *Credibility*

The evidence does show without dispute that Debra and Douglas Wright walked off their jobs on April 27. The evidence also shows that Debra and Douglas Wright talked with Plant Manager Caldwell when they returned to work on April 28. Caldwell was informed by them, among other things, that they had told employee Charles Cooke that they were leaving work on that night, that they had not quit and that they left because of their concern over a possible fight with Alfred Causby. I find that the evidence also shows that John Caldwell told the Wrights that none of the problems started until the Union tried to get in.

I make the above findings on the basis of admissions and credited evidence.

I find that Debra and Douglas Wright testified truthfully. I was impressed with the demeanor of each of them. There was little dispute in the evidence regarding what Respondent learned. To the extent there are conflicts I credit the Wrights' testimony over that of John Caldwell. Caldwell demonstrated some confusion and he admittedly did not recall the full April 28 conversation with the Wrights.

As to the testimony of Alfred Causby, his testimony was not material to the question of Respondent's knowledge of the events of April 27 in view of the undisputed evidence that no supervisor talked with Causby about those events. Moreover, I did not find Causby to be a fully credible witness. To the extent there were conflicts I credit the Wrights' testimony over that of Causby.

As to the testimony of Wanda Neal, I find that the credited record raised issues of credibility. Neal's testimony that Respondent had a past practice of automatic termination of employees that walked off the job was not supported by the record. On the basis of credited evidence it was apparent that employees were routinely permitted to continue working after they walked off the job after telling another employee they were leaving. I find that the record illustrated that Neal's testimony to the effect that Respondent had a firm rule of considering employees that walked off the job to have quit, was untrue. To the extent her testimony conflicts with credited evidence, I do not credit Neal's testimony.

On the basis of the full record including the evidence mentioned below, I find that the evidence supports a prima facie case of discrimination in Respondent's termination of Debra and Douglas Wright. That evidence includes proof of the elements of animus, timing, knowledge and disparity. Additionally the record revealed that Respondent advanced a pretextuous reason for the Wrights' discharges.

B. *As to Animus, the Evidence Cited Above Under Section 8(a)(1) Established Proof of Union Animus*

1. As to knowledge and timing the record proved that Respondent knew of the union feelings of the Wrights and that their discharges followed shortly after Respondent gained knowledge

Respondent's owner confronted Debra Wright in an April 19, 1990 meeting. Owner Tang said he wanted to remember the employees' faces and he walked up and looked at Debra Wright while she was questioning Tang as to why he had not make promises to the employees before the union campaign. Subsequently, the Wrights along with Charles Cooke and his wife, walked out of that meeting before they had been dismissed by Thomas Tang. On April 20, in a conversation with employee Glenda Simpson, Plant Manager Caldwell threatened that employees' wages would be reduced if they selected the Union. On April 23, Plant Manager Caldwell questioned Douglas and Debra Wright and he was told they supported the Union. Caldwell threatened the Wrights with discharge if they discussed the union during work. Four days later the Wrights walked off the job in order to avoid a confrontation with employee Alfred Causby. The following day they talked with Plant Manager Caldwell. During that conversation Caldwell associated their problem with Alfed Causby with the advent of the Union. Causby opposed the Union while the Wrights supported the Union. On the following workday, Monday, April 30, the Wrights were terminated.

Both Douglas and Debra Wright attended a meeting of the second-shift employees on April 19, 1990. Respondent's owner Thomas Tang and Plant Manager Caldwell conducted the meeting. Debra Wright testified:

> Thomas Tang said that he couldn't promise us anything with the Union trying to get in and he said that he wanted to remember all of our faces. And, I asked him why couldn't he promise us anything before the Union started trying to get in. And, he just moved closed to me, asking me what, wanting to know what I had said, and he got up close to me and I repeated it, I asked him why couldn't he have promised us anything before. And, he never did answer my question, he just backed up and him and Charles Cooke went on about—they were kind of arguing back and forth about insurance and the Union. And, Charles Cooke told him that everybody there was for the Union and nobody denied it.
>
> . . . .
>
> Well, Thomas Tang kept talking and we just—me and Doug and Charles Cooke and Lillian Cooke walked off. We got tired of listening to it and then the other employees kind of just drifted out, following, you know, just coming behind us out of there.

The Wrights talked with Plant Manager Caldwell about the Union on April 23, 1990. There were two conversations, the first involved Douglas Wright and Plant Manager Caldwell:

> [John Caldwell] came up to me, . . . . he said, ''Doug, said was you and Billy Count in that—and he called some other guy's name, and I said who, and he said that black guy out there, said was you all talking about the Union?'' I said, yes, sir, I said we was. And, he didn't say nothing else at that moment, he just turned around and walked off.

Douglas Wright testified that later that day he had a second conversation. Debra Wright was also present during that conversation. Douglas Wright's testimony corroborated Debra Wright who testified that she and Douglas talked with Plant Manager John Caldwell at the end of their shift on April 23, 1990:

> I asked John Caldwell if we could get fired for discussing the Union and he said yes. He said that the only place we could discuss the Union was in the canteen. We couldn't even discuss it in the bathrooms. And, he asked if me and my husband was for the Union and Doug and I both said yes. And, he asked us why and we told him because we needed insurance and the plant needed cleaned up.
>
> . . . .
>
> He said that if we wanted insurance, they had insurance, that he would set up a meeting with us and Wanda Nail so she could explain the insurance to us, and my husband told him that we couldn't afford $350.00 a month for insurance.

As mentioned above, Douglas and Debra Wright came in early on April 28 and talked with Plant Manager Caldwell. After the Wrights explained what occurred between them and Alfred Causby the night before,

> and [Caldwell] told us that none of this started until the Union started trying to get in. And, I said—me and Doug both said that the Union didn't have anything to do with this.

2. As to disparity the record illustrated that no other employees have been discharged under similar circumstances

The evidence was disputed regarding Respondent's treatment of employees that walked off the job. On one hand there was evidence that numerous employees frequently walked off the job and were not disciplined. On the other hand Respondent showed that 14 employees were considered to have voluntarily quit by walking off the job.

It was undisputed that Respondent did not have a published rule regarding treatment of employees that walked off the job. Respondent contended that even though it did not have a published rule, it was its practice to treat employees that walked off the job as having quit. The General Counsel disputed that contention and offered evidence to the effect that the normal practice was for employees to advise another employee at times when there were no assigned supervisors at the plant, and that Respondent did not discipline employees that followed that practice.

The record included the following regarding Respondent's practice.

The evidence indicated that employees clock out when leaving the job. Donald Patterson testified about that practice. In view of that evidence it is obvious that Respondent knew whenever employees left work early.

Douglas and Debra Wright testified that it was normal practice for second-shift employees to simply tell employee Charles Cooke when they left before the end of the shift. Up until 2 weeks before the Wrights' discharge other employees including Alfred Causby, Don Patterson, and Randy Atkins had left work without telling anyone other than another employee, they were leaving. None of those other employees were disciplined because they left early.

Alfred Causby, who was called by Respondent, admitted that the practice on the night shift was for employees to tell another employee if they left before the end of the shift. Causby testified that he was never given the supervisor's phone number and, to his knowledge, the office was locked.

When Debra and Douglas Wright started working the second shift in January 1990, Debra Wright asked Supervisor Evans what they should do if they needed to leave work early. Evans told her that she should tell her husband and that he should tell her.

James Evans did not deny Debra Wright's testimony that he said they should tell each other if they needed to leave work before the end of a shift. Evans did not deny that it was the practice for second-shift employees to tell another employee before leaving.

Don Sellers, a supervisor, testified that employees on the night shift occasionally left him a note when they had to leave during the shift. Sellers admitted that he did not expect employees to phone him after 11 p.m. During the time when there was no supervisor on the night shift, employees left occasionally because they were sick or, according to Sellers, ''because of personal reasons or there was an emergency of some sort.'' Those employees were not disciplined.

Former employee Donald Patterson testified that he worked for Respondent as a weaver on the second shift until March 26, 1990. Patterson testified that it was the practice for employees to tell another employee working the second shift on those occasion when that employee left work before the end of the shift. Patterson recalled that employee Jimmy Bowen left early on several occasions around January and March 1990, and that Bowen only told Patterson that Bowen was leaving. Patterson reminded Bowen to punch out. On one of the occasions when Bowen left early, Patterson told Supervisor James Evans the next day, that Bowen had left early.

Patterson worked 10-hour shifts and, on two occasions, he left early at the end of 8 hours because he was too tired to continue. Patterson told another employee, loom fixer Alfred Causby, that he was leaving and he clocked out. Respondent did not discipline Patterson for leaving early without telling supervision.

The record also shows that some employees walked off the job without telling other employees they were leaving or under circumstances which illustrated they were leaving because of anger over their work.

Employee Vera Ellis testified that she has left her work on occasions when she could not get anyone to repair her looms. Ellis walked off her job on three occasions from the fall 1989 through April 1, 1990.

John Caldwell agreed that on one occasion he went out to the parking lot and talked to Ellis after she became upset and walked off the job:

> Mr. Don Sellers told me that she was going home and I said what's the problem and he said she said she was upset and going home so I said let me go talk to her and I've always been able to talk to her and console her and I went out to meet her right there at the edge of the road and I said what's the problem. She said she couldn't get the loom fixer to fix the looms and I said well, you just come on and go with me and let's go get us a cup of coffee and let's sit down and talk a few minutes, so we went back to the canteen and got a cup of coffee and she got to feeling better, so she went back to work.

Don Sellers, Ellis' supervisor, testified about Ellis:

> Well, there have been several occasions where Ann has gotten upset, crying on the job. The last two (2) years it hasn't been as frequent, maybe three (3) times in the last couple years, but before that it was real frequent. Sometimes I would ask her, did she want to go home, which she would and other times she would come and tell me she was going home and other times I've let her sit in the bathroom and just cry for maybe an hour and she would go on and go back to work. It has happened on several occasions.

Subsequently Sellers testified:

> Well, there was an—I don't know if that was all that was involved about it. All I know is that [Ann Ellis] just gets upset quite often and cries and she goes home. I don't know what all the circumstances are.

Sellers admitted that Ann Ellis complained on occasion that she was upset because her fixer would not fix her looms.

Ellis was not disciplined for leaving work on any occasion.

Respondent offered documents showing that from October 17, 1988, through July 18, 1990, it has terminated 14 employees that walked off the job without notice. Wanda Neal testified that a few of those 14 employees phoned looking for work. Her policy was to initially tell the former employee that she did not have work available. If the former employee continued to call, Neal told them that it was Respondent's policy not to rehire anyone that was a voluntary quit because of walking off the job. Neal recalled telling three of those former employees that Respondent's policy made them ineligible for rehire. According to Neal's testimony, all the occasions of her telling employees of Respondent's policy to not rehire people that quit by walking off the job, occurred after the termination of Debra and Douglas Wright.

Personnel Director Neal testified that employees are permitted to leave work without being disciplined when they have worked a full shift before leaving and when they are sick. According to Neal, Don Patterson was permitted to leave on occasion when he was set to work 10 hours but he left after working only 8 because that fell within the full-shift exception. Nevertheless, as was the case with Respondent's rule, the record failed to show that employees were told of the policy or practice which permitted employees to leave after a full shift.

The general practice was never published and there was no showing that employees were told of the practice or its exceptions.

The record is convincing that Respondent observed the practice of permitting employees to walk off their jobs in instances where no supervisors were on duty, whenever the employee told another employee prior to leaving. There was no showing that anyone was discharged after following that practice. As to the 14 employees that were considered voluntary quits, the record failed to show that any of those employees followed the regular practice of notfiying another employee before leaving and the record failed to show that any of those employees had not actually intended to quit.

There was also a question of whether Respondent required its employees to stay on the job absent the existence of a specific reason or reasons for leaving.

In that regard Personnel Director Neal tesified that employees could leave if sick and after having worked a full shift even though the employee had been assigned overtime in addition to a full shift. Neal also testified that an emergency would exist if Respondent felt a situation existed in which an employee needed to leave in order to avoid a fight with another employee.

Here, as shown above, Respondent learned that the Wrights had left out of fear that there could be a fight involving fixer Alfred Causby. There was no evidence offered to show that Respondent had any basis on which to feel that the situation did not involve a possible fight. Respondent admittedly did not check into the Wrights' story that they feared a fight may occur similar to what had happened with two fixers a few weeks earlier.

Wanda Neal admitted that none of the ''voluntary quits'' other than the Wrights, involved employees that left work because they feared physical confrontation with another employee.

As to Debra and Douglas Wright, Wanda Neal testified that before their discharge she had been told by Plant Manager Caldwell that the Wrights left work after they got mad because Alfred (Causby) cursed them. She testified that they were considered as ''voluntary quit'' because:

> That they had walked off their job during the middle of their shift. They were not sick. They did not have sufficient reason to do so. It was considered a voluntary quit and we would not rehire them.

On cross-examination, Wanda Neal admitted that she had been told by Plant Manager Caldwell that the Wrights had left work during their shift because they were trying to avoid a confrontation with Alfred Causby who had cursed Debra Wright. Neal admitted that she did not investigate the circumstances of the Wrights leaving by talking with Alfred Causby.

As to this question the record shows that the evidence available to Respondent before April 30 showed that the Wrights had walked off the job out of fear that a fight could develop between Douglas Wright and Alfred Causby. Respondent did nothing to question the Wrights' contention in that regard. Employees were permitted to leave in emergencies. Wanda Neal indicated that an emergency would exist if Respondent felt employees feared a fight.

The record showed that the Wrights' justification for walking off their jobs was in line with what Respondent customarily permitted before April 30.

The record illustrated that other employees that walked off the job for reasons acceptable to Respondent, after notice, were not discharged.

Personnel Director Neal admitted that employees that have quit without walking off during the middle of a shift, have been allowed to return to work.

For example Neal admitted that during early April 1990, employee Keith Springs who walked off the job for approximately 40 minutes over a pay dispute, was allowed to return to work. Neal testified as follows regarding Springs:

> Q. Why did you return Mr. Springs to work?
>
> A. He was angry and had walked out angry. He didn't intend to quit according to him and when he came back and said he was calmed down and cooled off and he was ready to work as long as he understood he would have to work with the same pay and same conditions that was fine for him to return to work.

On the Sunday before Neal's testimony, a weaver, Robin Bowin, walked off during a shift after she told her supervisor that she was leaving because there was no fixer available.

The above as well as other incidents mentioned herein and the full record, proved that Respondent did not discharge other employees that walked off the job under circumstances similar to those involving the Wrights.

As to other voluntary quits, James Evans testified about the incident involving Don Patterson. Evans testified that Patterson told him that he was quitting before Patterson walked off the job. According to Evans, Patterson told him ''I'll just work you a week's notice.''

On March 26, 1990, Supervisor James Evans complained to Patterson about Patterson's production on Saturday, March 24. Patterson told Evans that he had been unable to get the fixer, Alfred Causby, to fix his looms. After a few minutes, Patterson walked off. He told employee Doug Wright that he was quitting.

Later that week Patterson came back to the plant and told Company President Bud Little and John Caldwell the reason why he had left. Caldwell said that he would like to have Patterson return to work. Patterson was told that he would have to talk with James Evans before he could return to work.

The following Monday Patterson met with Personnel Director Wanda Neal and James Evans. Evans told Patterson that if he returned to work, he would return to the same job with the same loom fixer. Patterson declined to return to work.

Subsequently, after the discharge of the Wrights, some 4 or 5 weeks before the October 22 hearing, Patterson phoned Wanda Neal and asked about a job that was vacant in another department. Neal told Patterson that Respondent had a policy against rehiring any former employee that walked off the job. Neal told Patterson that Respondent viewed that as a voluntary quit.

Neal's testimony agrees with that of Patterson as to the substance of their conversation. According to Neal, she told Patterson of Respondent's practice of not rehiring people that voluntarily quit by walking off their job, some 7 or 8 weeks after he quit. That would place that particular conversation

a few weeks after, rather than several months after, the Wright's termination.

Neal's testimony regarding her conversations with employees that had quit, showed that all her comments that Respondent had a policy of not rehiring people that quit by walking off the job, occurred after the Wrights' termination.

The above evidence and the entire record, shows that Respondent did not have a published rule regarding walking off the job at the time of the Wrights' termination. I find that credited evidence proved that before the Wrights were terminated Respondent's practice was that it did not discipline employees that walked off the night shift after telling another employee they were leaving.

The record proved that other employees walked off the job before April 30 after telling another employee in the absence of supervision, and were not discharged.

The record shows that Debra and Douglas Wright followed the established practice of telling another employee before leaving on April 27. The next day the Wrights returned to work. They talked to the plant manager about the April 27 incident and explained they had left due to the incident involving Alfred Causby and in order to avoid a possible fight.

Other employees that engaged in conduct similar to that of the Wrights, were not discharged. I find that the record shows that the Wrights were treated differently than other employees.

### C. *Finally, in Regard the Question of Whether the General Counsel has Proved a Prima Facie Case, I Find that the Record Shows that Respondent's Asserted Grounds for the Discharges Were Pretextual*

In addition to the above, I am convinced that Respondent advanced reasons for the Wrights' discharges which it knew were false.

Respondent contended that it had a firm unwritten rule that employees that walked off their job without notice were considered to have voluntarily quit. The evidence illustrated that Respondent had never published such a rule and it had never enforced such a practice under circumstances similar to the one involving the Wrights.

Respondent's officials contended that the Wrights had voluntarily quit; that they did not have justification to walk off their job; and that they did not inform a supervisor before leaving. The record shows that Respondent knew that the facts underlying all three of those factors did not support its determination to discharge the Wrights.

Before Respondent notified the Wrights of their termination on April 30, it knew that the Wrights had not quit. Plant Manager Caldwell knew the Wrights returned to work on April 28 and he learned from talking with the Wrights that they had not quit.

As to justification for leaving, Wanda Neal admitted that employees would be justified in walking off the job in order to avoid a fight. Nevertheless, the record including admissions by Respondent's supervisors, shows that Respondent knew that was the reason Douglas and Debra Wright walked off the job on April 27.

As to Respondent's contention that the Wrights failed to tell a supervisor they were leaving, the record illustrated that it was the practice of night-shift employees to tell another employee when leaving at times when there were no supervisors present. The record showed without dispute that there were no supervisors at the plant after 5 p.m. and the record showed without dispute, that the Wrights followed the accepted practice of telling employee Charles Cooke they were leaving on April 27. As shown above, Respondent knew from at least April 28 when the Wrights talked with the plant manager, they had told Charles Cooke before leaving work the night before.

In view of the above, and the full record, it is apparent that Respondent knew that it did not have a factual basis for the termination of the Wrights. The reasons advanced were pretextuous. (*Jack August Enterprises*, 232 NLRB 881 (1977), enfd. 583 F2d 575 (1st Cir. 1978); *Frigid Storage*, 294 NLRB 660 (1989); *Chopp & Co.*, 295 NLRB 1058 (1989).

On the basis of the record, I find that the General Counsel has proven a prima facie case. Respondent did not show that it would have discharged the Wrights in the absence of protected activities.

Respondent in its brief argued that the Wrights' justification for leaving the plant was contrived and unbelievable.

I am not persuaded by that argument because the record shows that was not a concern of Respondent at the time of the Wrights' termination.

On April 28 the Wrights told Plant Manager Caldwell why they had walked out the night before. Respondent did nothing to question the Wrights' story. None of Respondent's supervisors questioned anyone from the second shift regarding the events on the night of April 27. If, as Respondent now argues, it felt the Wrights' story was contrived and unbelievable, why did not it talk to some of the employees such as Charles Cooke and Alfred Causby, to check into the credibility of the Wrights' story?

In view of the absence of an investigation, I am convinced that the Respondent was not concerned with whether the Wrights were truthful. Therefore, I find that the Respondent did not view the Wrights' story as contrived and unbelievable.

I find that Respondent failed to prove that it would have terminated Debra and Douglas Wright in the absence of their protected activities. *Wright Line*, 251 NLRB 1083 (1980), enfd. 662 F.2d 899 (1st Cir. 1981), cert. denied 455 U.S. 989 (1982); *NLRB v. Transportation Management Corp.*, 462 U.S. 393 (1983); *Delta Gas, Inc.*, 283 NLRB 391 (1987), enfd. 840 F.2d 309 (5th Cir. 1988); *Southwire Co. v. NLRB*, 820 F.2d 453 (D.C. Cir. 1987); *Yaohan of California*, 280 NLRB 268 (1986).

### D. *Findings as to the Union's Objections*

In view of my findings above, I find that the record supports the Union's objections. In addition to my finding of 8(a)(1) violations, the record shows that Respondent discharged two unit employees during the critical period. Therefore, this is not a case where the misconduct of Respondent may have escaped the notice of fellow employees. I recommend that the election be set aside and a new election ordered.

## CONCLUSIONS OF LAW

1. Minette Mills, Inc. is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. Amalgamated Clothing and Textile Workers Union, AFL–CIO is a labor organization within the meaning of Section 2(5) of the Act.

3. Respondent by threatening to close its facility if its employees selected Amalgamated Clothing and Textile Workers Union, AFL–CIO as their collective-bargaining representative; by promulgating and attempting to enforce a no-talking rule which prohibited employees from engaging in union discussions at any time other than times when the employees were actually in the canteen; by interrogating its employees about their union activities; by threatening its employees with discharge and loss of jobs because of their support of the Union; by threatening its employees with unspecified reprisals if they selected the Union as their bargaining representative; and by threatening its employees with reduced wages if they selected the Union engaged in conduct violative of Section 8(a)(1) of the Act.

4. Respondent, by discharging employees Debra and Douglas Wright, because of its employees' activities on behalf of Amalgamated Clothing and Textile Workers Union, AFL–CIO, has violated Section 8(a)(1) and (3) of the Act.

5. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

## THE REMEDY

Having found that Respondent has engaged in unfair labor practices, I shall recommend that it be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Having found that Respondent has illegally discharged its employees in violation of certain sections of the Act, I shall order Respondent to offer Debra and Douglas Wright, immediate and full reinstatement to their former positions or, if those positions no longer exist, to substantially equivalent positions, without prejudice to their seniority or other rights and privileges. I further order Respondent to make Debra and Douglas Wright whole for any loss of earnings they suffered as a result of the discrimination against them and that Respondent remove from its records any reference to the unlawful actions against its employees and notify Debra and Douglas Wright in writing that Respondent's unlawful conduct will not be used as a basis for further personnel action. Backpay shal be computed as described in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as described in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended[1]

## ORDER

The Respondent, Minette Mills, Inc., Grover, North Carolina, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Engaging in conduct in violation of Section 8(a)(1) of the Act by threatening to close its facility if its employees selected Amalgamated Clothing and Textile Workers Union, AFL–CIO, or any other labor organization, as their collective-bargaining representative; by promulgating and attempting to enforce a no talking rule which prohibited employees from engaging in union discussions at any time other than times when the employees were actually in the canteen; by interrogating its employees about their union activities; by threatening its employees with discharge and loss of jobs because of their support of the Union; by threatening its employees with unspecified reprisals if they selected the Union as their bargaining representative and by threatening its employees with reduced wages if they selected the Union.

(b) Discharging its employees because of their protected activities.

(c) In any like or related manner interfering with, restraining, or coercing its employees in the exercise of rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Offer Debra and Douglas Wright immediate and full reinstatement to their former jobs or, if those jobs no longer exist, to substantially equivalent positions, without prejudice to their seniority or any other rights or privileges previously enjoyed, and make Debra and Douglas Wright whole for any loss of earnings plus interest, they suffered by reason of its illegal actions.

(b) Rescind its discharges issued to Debra and Douglas Wright and remove from its files any reference to its discharges of Debra and Douglas Wright, and notify each of them in writing that this has been done and that evidence of its unlawful actions will not be used against them in any way.

(c) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, and timecards, personnel records, reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Post at its facility in Grover, North Carolina, copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 11, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(e) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

[1] If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

## APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

Section 7 of the Act gives employees these rights.

To organize
To form, join, or assist any union
To bargain collectively through representatives of their own choice
To act together for other mutual aid or protection
To choose not to engage in any of these protected concerted activities.

WE WILL NOT threaten to close our facility if our employees select Amalgamated Clothing and Textile Workers Union, AFL–CIO, or any other labor organization, as their collective bargaining representative.

WE WILL NOT promulgate and attempt to enforce a no talking rule which prohibits employees from engaging in union discussions at any time other than times when the employees are actually in the canteen.

WE WILL NOT interrogate our employees about their union activities.

WE WILL NOT threaten our employees with discharge and loss of jobs because of their support of the Union.

WE WILL NOT threaten our employees with unspecified reprisals if they select the Union as their bargaining representative.

WE WILL NOT threaten our employees with reduced wages if they select the Union as their bargaining representative.

WE WILL NOT discharge our employees because they engage in protected concerted activities.

WE WILL NOT in any like or related manner interfere with, restrain or coerce our employees in the exercise of their rights guaranteed them by Section 7 of the National Labor Relations Act.

WE WILL offer immediate and full reinstatement to Debra and Douglas Wright to their former jobs, or, if those jobs no longer exist, to substantially equivalent positions without prejudice to their seniority or other rights and privileges.

WE WILL make Debra and Douglas Wright, whole for any loss of earnings they suffered by reason of our discrimination against them with interest.

WE WILL notify Debra and Douglas Wright, in writing, that we have rescinded the actions found illegal herein and that we will not use those actions against them in any manner.

MINETTE MILLS, INC.